

**STATE OF INDIANA
Board of Tax Review**

MEMORIAL HEALTH SYSTEMS, INC.	)	On Appeal from the Kosciusko County
	)	Property Tax Assessment Board of
Petitioner,	)	Appeals
)	
v.	)	Petition for Review of Exemption
	)	Form 132
KOSCIUSKO COUNTY PROPERTY	)	Petition Nos. 43-028-98-2-8-00003
TAX ASSESSMENT BOARD OF	)	43-028-98-2-8-00002
REVIEW,	)	43-028-98-2-8-00001
	)	43-027-97-2-8-00057
Respondent.	)	43-027-97-2-8-00057A
	)	43-027-97-2-8-00057B
)	
	)	Parcel Nos. 20-711001-38
	)	20-711001-37
	)	20-711001-36

Findings of Fact and Conclusions of Law

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Issue

Whether the land, improvements, and personal property owned by Memorial Health Systems, Inc., qualifies for property tax exemption pursuant to Ind. Code § 6-1.1-10-16 for charitable purposes.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall be considered a finding of fact.

2. Pursuant to Ind. Code § 6-1.1-11-3, Memorial Health System, Inc., (Memorial) filed an application for property tax exemption with the County Board of Review (County Board) on May 12, 1997 for the 1997 year. The County Board denied the application on September 23, 1997, and gave Memorial proper notice of denial. Pursuant to Ind. Code § 6-1.1-11-7, Memorial filed a Form 132 petition seeking a review of the County Board's action by the State Board. The Form 132 petition was filed October 22, 1997.

3. Memorial filed an application for property tax exemption with the County Property Tax Assessment Board of Appeals (PTABOA) on May 15, 1998 for the 1998 year. The PTABOA denied the application on January 11, 1999, and gave Memorial proper notice of denial. The Form 132 seeking review of the PTABOA's decision was filed on January 25, 1999.

4. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on June 23, 1999, before Hearing Officer Angela Smith-Jones. Testimony and exhibits were received into evidence. Timothy Hernly of Barnes & Thornburg and Timothy McGovern represented Memorial. Sue Ann Mitchell represented the County Board. Darby L. Davis represented the Township.

5. At the hearing, the subject Form 132 petitions were made part of the record and labeled Board Exhibit A. The Notices of Hearing on Petition were labeled Board Exhibit B. The Power of Attorney was labeled Board Exhibit C. In addition, the following items were received into evidence:
Petitioner Exhibit A – Articles of incorporation.
Petitioner Exhibit B – By-Laws.

Petitioner Exhibit C – Balance sheet for 1994, 95, & 96.

Petitioner Exhibit D – Balance sheet for 1996, 97, & 98.

Petitioner Exhibit E – Affidavit & Direct testimony of Timothy McGovern.

Petitioner Exhibit F – Brochure on Memorial Hospital & Health System.

Petitioner Exhibit G – Memorandum in support of exemption.

Respondent Exhibit A – Copy of Ind. Code § 6-1.1-10-16.

6. The subject property is located at 201 S. Main Street, Milford, Van Buren Township, Kosciusko County, Indiana. The tax years under appeal are 1997 & 1998. The Kosciusko County PTABOA determined the subject property to be 100% taxable for each year.
7. A single hearing was held for all petitions. The evidence presented, and testimony is identical. Therefore, this determination covers all petitions.

Additional Facts

8. The subject property consists of three (3) parcels. Parcel number 20-711001-37 contains a medical clinic. Parcel numbers 20-711001-36 and 20-711001-38 are vacant land.
9. The subject property is owned by Memorial Health Systems, Inc. The subject participates fully in all Medicare and Medicaid programs. The physicians who staff the medical clinic are employees of Memorial. The subject also offers charity care to patients based on their income. For example, a family of six (6) earning less than \$22,340 qualifies for a 100% reduction. Petitioner Exhibit E.
10. Memorial is a not-for-profit holding company that owns Memorial Hospital of South Bend, Inc. Memorial Hospital is a not-for-profit hospital under Section 501(c)(3) of the Internal Revenue Code. As such, Memorial's net earnings may

not inure to the benefit of any member, director, trustee, or officer, or to any other private individual. Petitioner Exhibit A.

11. Generally, Memorial Hospital was organized to provide health care services to residents of St. Joseph County and surrounding counties, and to provide health care education to staff, employees, patients, and members of the community. Petitioner Exhibit B.
12. There was no information presented that indicated the use of the vacant land.

Conclusions of Law

1. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

A. Burden In General

2. In reviewing the actions of the County Board (or PTABOA), the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
3. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.

4. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

B. Constitutional and Statutory Basis for Exemption

5. The General Assembly may exempt from property taxation any property being used for municipal, educational, literary, scientific, religious, or charitable purposes. Article 10, Section 1, of the Constitution of Indiana.
6. Article 10, Section 1 of the Constitution is not self-enacting. The Indiana General Assembly must enact legislation granting exemption. In this appeal, the Petitioner seeks exemption under Ind. Code § 6-1.1-10-16, which provides that property is exempt from property taxation if it is owned, used, and occupied for educational, literary, scientific, religious, or charitable purposes.
7. In Indiana, use of property by a nonprofit entity does not establish any inherent right to exemption. The grant of federal or state income tax exemption does not entitle a taxpayer to property tax exemption because income tax exemption does not depend so much on how the property is used but on how much money is spent. *Raintree Friends Housing, Inc. v. Indiana Department of Revenue*, 667 N.E. 2d 810 (Ind. Tax 1996)(501(c)(3) status does not entitle a taxpayer to tax exemption). For property tax exemption, the property must be predominately used or occupied for the exempt purpose. Ind. Code § 6-1.1-10-36.3.

C. Basis of Exemption and Burden

8. In Indiana, the general rule is that all property in the State is subject to property taxation. Ind. Code § 6-1.1-2-1.

9. The courts of some states construe constitutional and statutory tax exemptions liberally, some strictly. Indiana courts have been committed to a strict construction from an early date. *Orr v. Baker* (1853) 4 Ind. 86; *Monarch Steel Co., Inc. v. State Board of Tax Commissioners*, 669 N.E. 2d 199 (Ind. Tax 1996).
10. Strict construction construes exemption from the concept of the taxpayer citizen. All property receives protection, security and services from the government, e.g., fire and police protection and public schools. This security, protection, and other services always carry with them a corresponding obligation of pecuniary support - - taxation. When property is exempted from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *National Association of Miniature Enthusiasts v. State Board of Tax Commissioners (NAME)*, 671 N.E. 2d 218 (Ind. Tax 1996). Non-exempt property picks up a portion of taxes that the exempt property would otherwise have paid, and this should never be seen as an inconsequential shift.
11. This is why worthwhile activities or noble purpose is not enough for tax exemption. Exemption is justified and upheld on the basis of the accomplishment of a public purpose. *NAME*, 671 N.E. 2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E. 2d 850, 854 (Ind. Tax 1990)).
12. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statute under which the exemption is being claimed. *Monarch Steel*, 611 N.E. 2d at 714; *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E. 2d 936, 938 (Ind. Tax 1987).

D. Conclusions Regarding the Exemption Claim

13. Memorial is seeking exemption under Ind. Code § 6-1.1-10-16 claiming that the subject property is used for charitable purposes.

14. As of March 1, 1997, the subject property was owned by Memorial, a not-for-profit holding company that owns Memorial Hospital of South Bend, Inc. Memorial Hospital is a not-for-profit hospital under Section 501(c)(3) of the Internal Revenue Code. As such, Memorial's net earnings may not inure to the benefit of any member, director, trustee, or officer, or to any other private individual. Petitioner Exhibit A.
15. The medical clinic is operated by employees of Memorial. Nothing in the record suggests that the medical clinic is an office building leased by physicians in their private practices.
16. The record demonstrates that the medical clinic is being used for charitable purposes. Memorial offers charity care to patients based upon their family size and income. For example, a family of four (4) with an income between \$16,701 and \$20,786 qualifies for a 75% reduction in standard fees. A family of six (6) with an income less than \$22,340 qualifies for a 100% reduction. Memorial has a schedule with the income and family size guidelines.
17. The taxpayer has met this burden with respect to the medical clinic. Therefore, the parcel number 20-711001-37 is entitled to property tax exemption pursuant to Ind. Code § 6-1.1-10-16. This parcel is 100% exempt from taxation on the personal property and real property for the years 1997 and 1998.
18. The taxpayer bears the burden of proving that it is entitled to exemption. Parcel numbers 20-711001-38 and 20-711001-36 are unimproved land. Memorial has not demonstrated that the land is owned, occupied, and used for charitable purposes under Ind. Code § 6-1.1-10-16. Therefore, exemption is denied and these parcels are wholly taxable for the years 1997 and 1998.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this ____ day of _____, 2002.

Chairman, Indiana Board of Tax Review